

House Bill 139 (AS PASSED HOUSE AND SENATE)

By: Representatives Willard of the 49<sup>th</sup>, Lindsey of the 54<sup>th</sup>, Lane of the 167<sup>th</sup>, Tumlin of the 38<sup>th</sup>, Oliver of the 83<sup>rd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 53-1-20 and Article 1 of Chapter 2 of Title 53 of the Official Code  
2 of Georgia Annotated, relating, respectively, to renouncing succession and to general  
3 provisions relative to descent and distribution, so as to correct a cross-reference; to provide  
4 for forfeiture of an intestate share of an estate under certain circumstances; to provide for  
5 definitions; to provide for notice of proceedings; to provide for an appointment of a guardian  
6 ad litem under certain circumstances; to provide for judicial proceedings and standard of  
7 proof; to change certain provisions relating to the rules of inheritance when a decedent dies  
8 without a will; to provide for related matters; to provide for an effective date; to repeal  
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Code Section 53-1-20 of the Official Code of Georgia Annotated, relating to renouncing  
13 succession, is amended by revising subsection (f) as follows:

14 "(f)(1) Except as otherwise provided by the will or other governing instrument, a  
15 renunciation shall cause the renounced property to pass as if the person renouncing had  
16 predeceased the decedent or, in the case of property passing upon exercise of a power of  
17 appointment, as if the person renouncing had predeceased the holder of the power, even  
18 if the acceleration of a contingent remainder or other interest results. A will or other  
19 governing instrument may otherwise provide expressly or by implication, but the fact that  
20 a remainder or other future interest following a renounced interest is conditioned upon  
21 surviving the holder of such renounced interest shall not, without more, be sufficient to  
22 indicate that such conditioned interest should not accelerate by reason of such  
23 renunciation. Notwithstanding the foregoing, solely for the purposes of the last clause  
24 of paragraph (5) and the last clause of paragraph (7) of subsection ~~(b)~~ (c) of Code Section  
25 53-2-1, any individual renouncing who is the only sibling or the only aunt or uncle  
26 surviving the decedent shall not be deemed to have predeceased the decedent.

(2) Renounced property that is the subject of an attempted outright gift shall be treated as an incomplete gift.

(3) A renounced power over property shall be treated as if such power had not been created with respect to the person renouncing such power.

(4) The expression in a renunciation of an intent or desire that the property pass to certain persons shall be considered merely precatory and shall have no legal effect unless specifically declared to be a condition of the renunciation."

## SECTION 2.

Article 1 of Chapter 2 of Title 53, relating to general provisions relative to descent and distribution, is amended in Code Section 53-2-1, relating to rules of inheritance when a decedent dies without a will, by revising said Code section as follows:

"53-2-1.

(a) As used in this Code section, the term:

(1)(A) 'Abandon' means that a parent of a minor child, without justifiable cause, fails to communicate with the minor child, care for the minor child, and provide for the minor child's support as required by law or judicial decree for a period of at least one year immediately prior to the date of the death of the minor.

(B) 'Abandonment' means the act of abandoning.

(2) 'Minor child' means a person who is less than 18 years of age.

~~(a)~~(b) For purposes of this Code section:

(1) Children of the decedent who are born after the decedent's death are considered children in being at the decedent's death, provided they were conceived prior to the decedent's death, were born within ten months of the decedent's death, and survived 120 hours or more after birth; and

(2) The half-blood, whether on the maternal or paternal side, are considered equally with the whole-blood, so that the children of any common parent are treated as brothers and sisters to each other.

~~(b)~~(c) Except as provided in subsection (d) of this Code section, when ~~When~~ a decedent died without a will, the following rules shall determine such decedent's heirs:

(1) Upon the death of an individual who is survived by a spouse but not by any child or other descendant, the spouse is the sole heir. If the decedent is also survived by any child or other descendant, the spouse shall share equally with the children, with the descendants of any deceased child taking that child's share, per stirpes; provided, however, that the spouse's portion shall not be less than a one-third share;

(2) If the decedent is not survived by a spouse, the heirs shall be those relatives, as provided in this Code section, who are in the nearest degree to the decedent in which there is any survivor;

(3) Children of the decedent are in the first degree, and those who survive the decedent shall share the estate equally, with the descendants of any deceased child taking, per stirpes, the share that child would have taken if in life;

(4) Parents of the decedent are in the second degree, and those who survive the decedent shall share the estate equally;

(5) Siblings of the decedent are in the third degree, and those who survive the decedent shall share the estate equally, with the descendants of any deceased sibling taking, per stirpes, the share that sibling would have taken if in life; provided, however, that, subject to the provisions of paragraph (1) of subsection (f) of Code Section 53-1-20, if no sibling survives the decedent, the nieces and nephews who survive the decedent shall take the estate in equal shares, with the descendants of any deceased niece or nephew taking, per stirpes, the share that niece or nephew would have taken if in life;

(6) Grandparents of the decedent are in the fourth degree, and those who survive the decedent shall share the estate equally;

(7) Uncles and aunts of the decedent are in the fifth degree, and those who survive the decedent shall share the estate equally, with the children of any deceased uncle or aunt taking, per stirpes, the share that uncle or aunt would have taken if in life; provided, however, that, subject to the provisions of paragraph (1) of subsection (f) of Code Section 53-1-20, if no uncle or aunt of the decedent survives the decedent, the first cousins who survive the decedent shall share the estate equally; and

(8) The more remote degrees of kinship shall be determined by counting the number of steps in the chain from the relative to the closest common ancestor of the relative and decedent and the number of steps in the chain from the common ancestor to the decedent. The sum of the steps in the two chains shall be the degree of kinship, and the surviving relatives with the lowest sum shall be in the nearest degree and shall share the estate equally.

(d) Except as provided in Code Sections 19-7-1 and 51-4-4 for the right of recovery for the wrongful death of a child, when a minor child dies without a will, a parent who willfully abandoned his or her minor child and has maintained such abandonment shall lose all right to intestate succession to the minor child's estate and shall not have the right to administer the minor child's estate. A parent who has been deprived of the custody of his or her minor child under an order of a court of competent jurisdiction and who has substantially complied with the support requirements of the order shall not be barred from inheriting from the minor child's estate.

1 (e) For cases in which abandonment is alleged, the moving party shall file a motion with  
2 the probate court requesting the judge to determine the issue of abandonment and shall  
3 serve all parties as set forth in subsection (f) of this Code section. A hearing shall be  
4 conducted and all parties shall have the opportunity to present evidence regarding the  
5 party's relationship with the decedent. The burden of proof to show an abandonment is on  
6 the person asserting the abandonment by clear and convincing evidence.

7 (f) All parties to a motion filed pursuant to subsection (e) of this Code section shall be  
8 served in accordance with Chapter 11 of this title. If a party cannot be personally served  
9 and the party's interest in an estate is subject to forfeiture pursuant to subsection (d) of this  
10 Code section, the judge shall appoint a guardian ad litem for the party. If a party cannot  
11 be personally served, the citation shall also be published in the newspaper in which  
12 sheriff's advertisements are published in the county where the party was last known to  
13 reside.

14 (g) In the event that a parent is disqualified from taking a distributive share in the estate  
15 of a decedent under subsection (d) of this Code section, the estate of such decedent shall  
16 be distributed in accordance with subsection (c) of this Code section as though the parent  
17 had predeceased the decedent."

### 18 SECTION 3.

19 This Act shall become effective on July 1, 2007.

### 20 SECTION 4.

21 All laws and parts of laws in conflict with this Act are repealed.